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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,102	09/23/2003	Roy Martin	S1364-7035.30	1851

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LOWRIE, LANDO & ANASTASI
RIVERFRONT OFFICE
ONE MAIN STREET, ELEVENTH FLOOR
CAMBRIDGE, MA 02142

EXAMINER

HRUSKOCI, PETER A

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,102

Applicant(s)

MARTIN, ROY

Examiner

Peter A. Hruskoci

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004 and 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steininger et al. 5,895,565 in view of Martin et al. 6,149,819. Steininger et al. disclose (see col. 2 line 41 through col. 4 line 67) a method for measuring a sanitizer or oxidizer level and ORP of water to control the addition of sanitizer and oxidizer substantially as claimed. It would appear that the addition of the sanitizer in Steininger et al. is based on a targeted concentration and demand. The claims differ from Steininger et al. by reciting steps for controlling the second oxidizer based on the oxidation reduction potential of water in the aqueous system. Martin et al. disclose (see col. 4 line 16 through col. 6 line 25) that it is known in the art to control the addition of first and second oxidizers to an aqueous system utilizing the oxidation reduction potential of the water in an aqueous system. It would have been obvious to one skilled in the art to modify the method of Steininger et al. by utilizing the recited steps for controlling the addition of the second oxidizer in view of the teachings of Martin et al., to aid in sanitizing and oxidizing the water. With regard to claims 5 and 6, it is submitted that Martin et al. as applied above disclose the use of a halogen donor and peroxygen.

Applicant alleges that Steininger et al. and Martin fail to recognize that selective oxidizer control can be performed, thus an ordinarily skilled artisan would not have arrived at the invention as claimed and would not have had any reasonable expectation that the proposed

combination would successfully perform as claimed. It is submitted that “selective oxidizer control” is not recited in claim 3. Furthermore, applicant has not presented sufficient factual evidence to support the above allegation.

Applicant alleges that because the principles of operation of the techniques disclosed by Steininger et al. differ from those principles utilized in the techniques disclosed in Martin et al., an ordinarily skilled artisan would not have combined the teachings. It is submitted that the teachings of Steininger et al. include the use of a PPM sensor or ORP sensor or both. It is further submitted that the superchlorination technique disclosed in Steininger et al. and the continuous breakpoint chlorination technique disclosed in Martin are not excluded from the instant claims. Furthermore, applicant has not supplied sufficient evidence to support the above allegation.

Applicant argues that Steininger et al. fail to recognize the ORP is influenced by a plurality of species contributing to overall oxidation-reduction potential and that selective control of a particular oxidizer in a multiple oxidizer system can be achieved by utilizing a specific sensor instead of an ORP sensor. It is submitted that the influence of ORP by a plurality of species is not recited in claim 1. Furthermore, Martin et al. was used to teach that it is known in the art to control the addition of first and second oxidizers to an aqueous system utilizing the oxidation reduction potential of the water in an aqueous system, while maintaining the required PPM's of the oxidizers.

Applicant argues that in contrast to Steininger et al. and Martin, Table 1 of the instant specification shows that the addition of a peroxygen compound can significantly influence the ORP measurement. It is submitted that the results show in Table 1 of the specification have been carefully considered but fail to overcome the above rejection. It is submitted that the specific

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test conditions utilized to produce the results are not commensurate with the scope of the instant claims. It is noted that the test conditions utilized specific sensors and oxidizers to maintain specific halogen and ORP levels, which are not recited in the instant claims.

Applicant argues that neither Steininger et al. or Martin teach how addition of a first oxidizer and second oxidizer can be controlled according to a first oxidizer concentration and an oxidation reduction potential. It is submitted that the teachings of Steininger et al. include the addition of a first sanitizer or oxidizer and a second oxidizer, and a PPM sensor and ORP sensor to control this addition. It is further submitted that the teachings of Martin include optimizing the feed rate and ratio of first and second oxidizers to maintain desired PPM and ORP ranges, which would appear to control the addition of the oxidizers according to a first oxidizer concentration and oxidation reduction potential.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

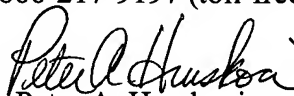
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter A. Hruskoci whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 6:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Peter A. Hruskoci
Primary Examiner
Art Unit 1724

2/28/05